

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1379 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TAX & TILES ENGINEERING

Versus

KANTILAL N MODHAKIYA

Appearance:

MR BHARAT J SHELAT for Petitioners

MR Baiju Joshi for MR SHIRISH JOSHI for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. Appellants, original defendants, have challenged judgment and decree dated July 31, 1979, passed by learned City Civil Judge, City Civil Court, Ahmedabad, in Civil Suit No.3957 of 1975, by which, the appellants were directed to pay to the respondent (original plaintiff) an amount of Rs.12,860/-, with interest at the rate of 6% per annum on Rs.12,000/- from the date of the suit till recovery and costs of the suit.

2. As per the respondent's case, appellant No.2 carries on business in the name of appellant No.1, of which he is sole proprietor. The appellants required funds and the respondent had advanced loan on interest at the rate of 1% per month as under: Rs. 5000/- on 26.3.1974; Rs.2000/- on 6.6.1974; Rs.5000/- on 24.8.1974

and Rs.2000/- on 17.10.1974. Out of the above amounts, the appellants had paid Rs.2000/- on 19.10.1974 and, thus, the respondent was entitled to Rs.12,000/- as principal and interest of Rs.1680/- from 1.11.1974 till the date of filing of the suit. Notice was served on the appellants on August 11, 1974, and, as the appellants did not pay the amount as demanded by the respondent, the said suit was filed by the respondent for a decree of Rs.13,700/- against the appellants.

3. The appellants, by filing their reply at Exh.9, admitted the different amounts given by the respondent. However, it was contended that the respondent had taken signatures of the appellants on three blank papers and had also obtained cheque of Rs.12,000/- by way of security towards the said loan amount. It was contended that, on different dates, the appellants had paid Rs.7515/- to the respondent, which was not credited. It was also contended that on March 14, 1974, the appellants had manufactured a ball mill mixture machine and issued Bill No.A/29 in the respondent's name which was returned by the respondent with instruction that bill may be preferred in the name of his purchaser and the payment would be made later on. As per instruction of the respondent, second bill was prepared on July 31, 1975 for Rs.3539.75 ps and the respondent had not paid amount of the said bill till today. The appellants, therefore, averred that the respondent was not entitled to any amount with interest as claimed in the plaint and the suit be dismissed with costs.

4. The trial court, on appreciation of oral as well as documentary evidence and the arguments advanced by learned advocates for the parties, came to the conclusion that the respondent was entitled to interest at the rate of 6% per annum on the amount which was due from the appellant. That, the appellants had failed to prove that they had paid Rs.7515 as stated in their written statements Exh.9. The trial court also held that the appellants had failed to prove that they were entitled to Rs.3539/- for price of ball mill mixture machine from the respondent. On the basis of aboveresferred to conclusions, the trial court decreed the suit partly, which has given rise to filing of this appeal by the appellants.

5. Learned counsel for the appellants and the respondent have taken me through entire evidence produced on record of the case. Learned counsel for the appellants has urged that the trial court had erred in not appreciating that the appellants had paid an amount of Rs.7515/- to the respondent. Learned counsel for the

appellants further urged that bill of Rs.3539/- remains unpaid by the respondent for price of ball mill mixture machine supplied to the respondent. Learned counsel for the appellants urged that, if amounts of Rs.7515 and Rs.3539 are taken into consideration, then nothing was due to be paid to the respondent and, therefore, the first appeal be allowed and the decree of the trial court be set aside.

6. In my opinion, none of the contentions raised on behalf of the appellants deserves any merit and they are required to be rejected. The trial court, after considering the material produced before it, had concluded that by letter Exh.69, there was categorical admission of the appellants that they would repay amount of Rs.12,000/- after some time from sale of proceeds of sizing machine, which was lying with them. The letter Exh.69 is dated 4.7.1975, whereas the alleged bill of Rs.3539 is dated 14.3.1975, i.e prior to issuance of letter Exh.69. Contents of letter Exh.69, therefore, destroyed theory of the appellants that amount of Rs.3539 was to be recovered from the respondent for price of the ball mill mixture machine. Admittedly, bill Exh.52 was issued after issuance of letter Exh.69 which was dated 47.1975, wherein, the appellants had admitted dues of Rs.12,000/- of the respondent. The defence raised by the appellants in the written statement was totally false and fabricated with a view to deprive the respondent of his decretal dues. The findings recorded and the conclusions arrived at by the trial court do not call for any interference in this appeal. The award of interest on the decretal amount of Rs.12,000/- is also found to be legal and no interference is called for to set aside the award of interest at the rate of 6% per annum. Under the circumstances, I am of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned decree in this appeal.

6. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

(swamy)